

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA,

v.

18-CR-194

PATRICK J. WASHINGTON,

DECISION AND ORDER

Defendant.

1. On October 11, 2018, the defendant **Patrick Washington**, agreed to waive indictment and plead guilty to Count **1** of the **Information** charging a violation of Title **21**, United States Code, Section **841(a)(1)** (**possession with intent to distribute butyryl fentanyl**). Docket Item **19**.

2. On October 11, 2018, the Honorable **H. Kenneth Schroeder, Jr.**, United States Magistrate Judge, filed a Report & Recommendation recommending that the defendant's plea of guilty be accepted and that the defendant be adjudged guilty. Docket Item **21**.

3. This Court has not received objections to the Report & Recommendation in accordance with Title 28, United States Code, Section 636(b)(1), and Rule 59(b) of the Federal Rules of Criminal Procedure, and the time to object now has expired.

4. This Court has carefully reviewed *de novo* Judge **Schroeder's** Report & Recommendation (docket item **21**), the plea agreement (docket item **19**), the information (docket item **18**), a transcript of the digital FTR recording of the plea proceeding (docket item **22**), and the applicable law. This Court finds no factual error in Judge **Schroeder's** Report & Recommendation but finds one legal error. When

informing Washington of his trial rights during the plea allocution, Judge Schroeder omitted the right to be represented by counsel—and to have the court appoint counsel if the defendant cannot afford to retain counsel—at trial and at every other stage of the proceeding. Fed. R. Crim. P. 11(b)(1)(D) requires that the defendant be informed of that right during the plea colloquy so that in considering and accepting a defendant's plea of guilty, the Court can be sure that the defendant understands and knowingly waives that right, among several others.

5. On December 12, 2018, this Court therefore reopened Washington's plea allocution and informed him of his right to counsel as required by Fed. R. Crim. P. 11(b)(1)(D). Docket Item 25. Washington was placed under oath and advised the Court that he understands and waives his right to counsel as noted above and that he still wants the Court to accept his plea of guilty. Because Washington has been informed of, and has knowingly waived, all his rights as Rule 11 requires, this Court now adopts Judge **Schroeder**'s recommendation that the defendant's plea of guilty be accepted, and the defendant is adjudged guilty of Count **1** of the **Information**.

IT IS HEREBY ORDERED that in light of the addition to the plea allocution conducted before this Court on December 12, 2018, this Court adopts Judge Schroeder's October 11, 2018 Report & Recommendation, Docket Item 21, including the authorities cited and the reasons given therein, and it is further

ORDERED that the Court accepts the defendant's plea of guilty and defers acceptance of the plea agreement pursuant to Sentencing Guidelines Section 6B1.1(c), and the defendant, Patrick Washington, is now adjudged guilty under Title 21, United States Code, Section 841(a)(1).

SO ORDERED.

Dated: December 12, 2018
Buffalo, New York

s/ Lawrence J. Vilardo
LAWRENCE J. VILARDO
UNITED STATES DISTRICT JUDGE